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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SHIRLEY HETLAND,
Plaintiff,
v.
SIMM ASSOCIATES, INC.,
Defendant.

Case No. 13 04
PLAINTIFF'S COMPLAINT

DMR

0498

PLAINTIFF'S COMPLAINT

Plaintiff, SHIRLEY HETLAND (Plaintiff), through her attorneys, KROHN & MOSS, LTD., alleges the following against Defendant, SIMM ASSOCIATES, INC., (Defendant):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA).
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788 et seq.* (RFDCPA).

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before “any appropriate United States district court

1 without regard to the amount in controversy," and 28 U.S.C. 1337 grants this court
2 supplemental jurisdiction over the state claims contained within.

3 4. Defendant conducts business in the state of California, and therefore, personal
4 jurisdiction is established.
5 5. Venue is proper pursuant to 28 U.S.C. 1331(b)(2).

6 **PARTIES**

7 6. Plaintiff is a natural person residing in Foster City, San Mateo County, California.
8 7. Plaintiff is a consumer as that term is defined by 15 U.S.C. 1692a(3), and according to
9 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. 1692a(5)
10 and *Cal. Civ. Code* § 1788.2(h).
11 8. Defendant is a debt collector as that term is defined by 15 U.S.C. 1692a(6) and *Cal. Civ.*
12 *Code* §1788.2(c), and sought to collect a consumer debt from Plaintiff.
13 9. Defendant is a collection agency with a business office in Newark, Delaware.
14 10. Defendant acted through its agents, employees, officers, members, directors, heirs,
15 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
16 insurers.

17 **FACTUAL ALLEGATIONS**

18 11. Defendant places telephone calls to Plaintiff in an attempt to collect an alleged debt.
19 12. Defendant places its telephone calls to Plaintiff on her home telephone (xxx-xxx-8973).
20 13. Defendant has assigned reference number 6528291 to the debt Defendant is attempting
21 to collect. *See* transcribed voicemail message attached hereto as Exhibit A.
22 14. Upon information and belief, the alleged debt Defendant is attempting to collect arises
23 from transactions for personal, family, and household purposes.
24 15. In or around April or May 2012, Defendant placed a collection call to Plaintiff and left a
25 message as Plaintiff was unable to answer its call. *See* Exhibit A.

1 16. Defendant's collector, Ginger Wheeler, advised Plaintiff it was calling from Simm
2 Associates and provided telephone number of 800-651-9054. *See Exhibit A.*
3 17. However, Defendant did not inform Plaintiff that it was a debt collector or that it was
4 calling about a debt. *See Exhibit A.*
5 18. Instead, Defendant stated that it was calling about a "business matter." *See Exhibit A.*
6 19. Defendant further advised Plaintiff it needed to discuss with her or whomever
7 "represents" her. *See Exhibit A.*

8
9 **COUNT I**
10 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

11 20. Defendant violated the FDCPA based on the following:
12 a. Defendant violated §1692e(10) of the FDCPA by using deceptive means in an
13 attempt to collect a debt;
14 b. Defendant violated §1692e(11) of the FDCPA by failing to disclose in
15 subsequent communications that the communication was from a debt collector.

16 WHEREFORE, Plaintiff, SHIRLEY HETLAND, respectfully requests judgment be
17 entered against Defendant, SIMM ASSOCIATES, INC., for the following:

18 21. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, 15
19 U.S.C. 1692k,
20 22. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
21 15 U.S.C. 1692k.
22 23. Any other relief that this Honorable Court deems appropriate.

23
24 **COUNT II**
25 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT**

26 24. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as
27 the allegations in Count II of Plaintiff's Complaint.

1 25. Defendant violated the RFDCPA based on the following:

2 a. Defendant violated the §1788.17 of the RFDCPA by continuously failing to
3 comply with the statutory regulations contained within the FDCPA, 15 U.S.C. §
4 1692 *et seq.*

5 WHEREFORE, Plaintiff, SHIRLEY HETLAND, respectfully requests judgment be
6 entered against Defendant, SIMM ASSOCIATES, INC., for the following:

7 26. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices
8 Act, *Cal. Civ. Code* §1788.30(b),

9 27. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection
10 Practices Act, *Cal. Civ Code* § 1788.30(c), and

11 28. Any other relief that this Honorable Court deems appropriate.

12
13 RESPECTFULLY SUBMITTED,

14 DATED: February 1, 2013

KROHN & MOSS, LTD.

15 By: 

16 Jessica L. Pascale
17 Attorney for Plaintiff

EXHIBIT A

Hello Ms. Hetland this is Ginger Wheeler I'm with the office of Simm Associates. You have a business matter sent to my office that I need to discuss with you or whoever represents you. Please return my call at 1-800-651-9054. Your reference number is 6528291.